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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

COLDWELL BANKER RESIDENTIAL
BROKERAGE COMPANY,

Cross-complainant and Appellant,

v.

MIRIAM GROSS,

Cross-defendant and Respondent.

B232455

(Los Angeles County
Super. Ct. No. SC 443681)

APPEAL from a judgment of the Superior Court of Los Angeles County,
Abraham Khan, Judge. Affirmed.

Halling + Sokol, LLP, Steven A. Sokol and Mark J. Uyeno for Cross-
complainant and Appellant.

Law Office of Baruch C. Cohen, Baruch C. Cohen; Law Office of Michael
Abramson and Michael A. Abramson for Cross-defendant and Respondent.

* * * * *

Coldwell Banker Residential Brokerage Company (Coldwell) appeals from the February 2011, order denying its special motion to strike Miriam Gross's (Gross) second cause of action for slander of title from her cross-complaint pursuant to Code of Civil Procedure section 425.16 (i.e., anti-SLAPP motion). Because Coldwell has failed to procure a record on appeal that would allow us to address the merits of its argument, we affirm the judgment.

FACTS AND PROCEDURAL HISTORY

The underlying case arises from a complaint brought by the buyers of certain real property (buyers) for specific performance against Gross for her failure to sell her home pursuant to a purchase agreement.

1. Underlying Action and Lis Pendens

Gross owns a residential property on Formosa Avenue where she lives with her husband and four children.

In July 2010, Coldwell represented buyers who sought to purchase Gross's home. The parties and their agents, including Coldwell, engaged in negotiations resulting in an offer and a series of counter offers.¹ According to the complaint, a written purchase agreement was entered into on July 12, 2010.

By August 2010, Gross had not yet begun to comply with escrow terms. Gross claims she never agreed to sell her home and her signature on the July 12, 2010 purchase agreement was forged. Buyers brought suit against Gross for specific performance of the agreement and recorded a lis pendens against the property pursuant to Code of Civil Procedure section 405.20.²

¹ On July 5, 2010, buyers submitted an offer through Coldwell to purchase Gross's home for \$1.35 million. On July 7, Gross submitted a counter offer asking for \$1.4 million and other specialized terms. The next day, buyers responded with a counter offer of either \$1.375 million or \$1.4 million with additional terms. On July 12, Gross's agent submitted a counter offer on her behalf reflecting a purchase price of \$1.41 million with a few additional terms.

² Coldwell was not a party to the complaint and did not participate in recording the lis pendens.

In September 2010, Gross filed a cross-complaint against buyers alleging numerous causes of action. Along with buyers, Coldwell was brought in as a cross-defendant in the second cause of action for slander of title based on recording “a wrongful lis pendens against the property.” In response, Coldwell filed a cross-complaint against Gross for breach of contract seeking to recover broker’s fees pursuant to the purchase agreement.

2. Coldwell’s Anti-SLAPP Motion

Coldwell filed an anti-SLAPP motion to strike the slander of title claim pursuant to Code of Civil Procedure section 425.16, arguing that Gross’s claim arose from protected petitioning activity, as it was based on buyers’ recording of the lis pendens.³ Coldwell also argued that Gross could not show a probability of prevailing on the claim because buyers’ recording of the lis pendens was absolutely protected by the litigation privilege contained in Civil Code section 47, subdivision (b).

On February 17, 2011, the court issued a minute order denying Coldwell’s motion. The court dismissed Gross’s motion to expunge the lis pendens as moot because it had already been removed by buyers.

DISCUSSION

1. Anti-SLAPP Statute and Standard of Review

Code of Civil Procedure section 425.16, subdivision (b)(1) authorizes the filing of a special motion that requires the court to strike claims that are brought “against a person arising from any act of that person in furtherance of the person’s right of petition or free speech . . . unless the court determines that the plaintiff has established that there is a probability that the plaintiff will prevail on the claim.”

³ While the motion was pending, buyers and Gross entered into an agreement. Buyers withdrew the lis pendens and dismissed their complaint and Gross dismissed all causes of action in her cross-complaint against buyers. The only cause of action that remained in Gross’s cross-complaint was the slander of title cause of action against Coldwell.

In determining whether to grant an anti-SLAPP motion, the court must engage in a two-step process. “First, the court decides whether the defendant has made a threshold showing that the challenged cause of action is one “arising from” protected activity. [Citation.] If the court finds such a showing has been made, it then must consider whether the plaintiff has demonstrated a probability of prevailing on the claim.’ [Citation.]” (*Episcopal Church Cases* (2009) 45 Cal.4th 467, 477.)

We review an order granting or denying an anti-SLAPP motion under a de novo standard, applying the same two-pronged procedure as the trial court. (*Alpha & Omega Development, LP v. Whillock Contracting, Inc.* (2011) 200 Cal.App.4th 656, 663.)

2. Analysis

Because the record provided to this court does not contain Gross’s cross-complaint, we are unable to address the merits of this appeal.

Generally, a judgment by the lower court is presumed correct and it is the appellant’s responsibility to provide this court with an adequate record affirmatively proving error. (*Fladeboe v. American Isuzu Motors Inc.* (2007) 150 Cal.App.4th 42, 58.)

As described above, a de novo review of Coldwell’s anti-SLAPP motion requires us to determine both whether recording lis pendens was a protected activity and whether Gross demonstrated a probability of prevailing on her claim of slander of title. Without the cross-complaint we do not know what factual allegations were made to support Gross’s slander of title cause of action and whether evidence shows a probability of prevailing. There are some indicators in Coldwell’s anti-SLAPP motion and in Gross’s opposition of what Gross may have pled in her cross-complaint, but there is not a complete recitation of the actual allegations.

In the absence of an adequate record showing error, we are bound by the presumption that the judgment is correct. (*Ermoian v. Desert Hospital* (2007) 152 Cal.App.4th 475, 494.)

DISPOSITION

The judgment is affirmed.

FLIER, J.

WE CONCUR:

RUBIN, Acting P. J.

GRIMES, J.